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July 27, 2012

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The Honorable David R. Homer  
Chief United States Magistrate Judge  
United States District Court  
for the Northern District of New York  
James T. Foley U.S. Courthouse  
445 Broadway  
Albany, NY 12207

Re: *Foley v. Pollay*, 1:11-CV-0724 (TJM/DRH)

Dear Judge Homer:

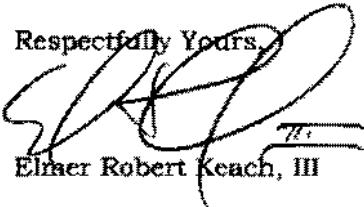
By this letter, the Plaintiff seeks a discovery conference with the Court. The Plaintiff, James Foley, was falsely arrested by Officer Christopher Pollay of the Troy Police Department, and suffered fractured ribs and a collapsed lung as a result of Officer Pollay brutalizing him during his arrest for "Obstruction of Governmental Administration." During the course of discovery in this action, the Plaintiff has requested information about Internal Affairs complaints filed against Troy Police Officers in support of his *Monell* claim. These claims are particularly relevant to this action, against this municipal Defendant, given past concerns raised by this Court regarding the failure of the City of Troy to appropriately investigate internal affairs complaints. Specifically, Chief Judge Sharpe has previously written to the City of Troy on January 27, 2005, and expressed that a Federal jury in another action was "extremely upset with their perception that the Troy Police Department did not have a commitment to investigating citizen use of force complaints." A copy of Chief Judge Sharpe's letter, which was publicly filed in another action, is attached to this letter.

On Wednesday, the Plaintiff proceeded to review all internal affairs complaints filed against Troy Police officers from 2005 to 2008, and confirmed the "perception" that the City of Troy does next to nothing to properly investigate internal affairs complaints against its police officers. In fact, my review of these records confirmed, absent public or judicial pressure, or a subordinate insulting a member of the Troy PD command staff, that the City of Troy does nothing, or next to nothing, to investigate internal affairs complaints and/or take appropriate action in the face of serious misconduct by its police officers. As part of my review this past Wednesday, I arranged with the Defendants to copy scores of documents after reviewing hundreds of records. The Defendants expressed concerns about a protective order, so I left these copied documents in the possession of the Defendants' counsel, who assured me they would be provided following our discussions regarding a protective order or possible application to the Court. Now, the Defendants are refusing to provide all of these documents to the Plaintiff, claiming that they will be the gatekeeper of "relevance," and will only provide documents that they believe are "relevant" to Mr. Foley's claims. It is the Plaintiff's perspective, having reviewed these documents for several hours, that all of them are relevant to his *Monell* claim.

The Honorable David R. Homer  
July 27, 2012, Page 2  
Re: *Foley v. Pollay*

It is clear that the parties are at an impasse, and the Plaintiff respectfully suggests that the Court schedule a discovery conference to address these issues. Should Your Honor be amenable to this request, I will work with Mrs. Hennessy to schedule such a conference.

Thank you for your consideration of this letter. Should Your Honor have any additional questions or concerns, please do not hesitate to contact me.

Respectfully Yours,  
  
Elmer Robert Keach, III

Enclosure

cc:

*By ECF*  
All Counsel of Record